

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MARTIN G. CROWLEY,

Petitioner,

v.

U.S. BANKRUPTCY COURT, DISTRICT OF
NEVADA, the Hon. BRUCE T. BEESLEY
presiding, SENECA BURKE, creditor, real
party in interest,

Respondents.

3:12-cv-647-RCJ-VPC

ORDER

Currently before the Court is Petitioner Martin Crowley's Emergency Motion for Writ of Mandamus/Prohibition and Request for Immediate Stay (#1).

BACKGROUND

According to the motion, Crowley is a Chapter 13 debtor. (Emergency Mot. (#1) at 2). Senecia Burke is a creditor who filed an application for a debtor's exam. (*Id.*). In response, Crowley filed a motion for a protective order. (*Id.*). Without waiting for a hearing on the protective order, the bankruptcy court clerk's office issued the order granting the debtor's exam. (*Id.*). Burke served Crowley with a subpoena to provide at the time of the exam "an extensive list of personal and business documents numbering in hundreds of pages." (*Id.*).

According to the motion, on December 7, 2012, the bankruptcy court held a hearing¹ on the motion for protective order. (*Id.*). The bankruptcy court denied the motion for a protective order, stating in effect, "You filed for bankruptcy, you have to be subject to

¹ There are no transcripts or minutes of this hearing in the bankruptcy docket. (See generally Bankruptcy Docket, case no. 12-bk-51908-btb).

1 examination, motion denied." (*Id.*). The bankruptcy court refused to listen to any of the legal
 2 arguments or facts that Crowley² had to provide. (*Id.* at 3). The bankruptcy court also refused
 3 to address the issue of the vast extent of the documents demanded in the subpoena or to
 4 consider limiting the production to a more reasonable set of documents. (*Id.*).

5 Crowley's motion for protective order, filed on October 19, 2012, in bankruptcy court,
 6 stated that Burke's examination was for the purpose of abuse and harassment. (Mot. for
 7 Protective Order (#1-1) at 8, 10). Crowley argued that Burke did not show any purpose in the
 8 proposed debtor's exam. (*Id.* at 10). Crowley asserted that Burke appeared to be retaliating
 9 because he filed for bankruptcy. (*Id.*).

10 DISCUSSION

11 Crowley requests that this Court issue a writ of mandamus/prohibition directed to the
 12 Bankruptcy Court to suspend an examination of debtor under Bankruptcy Rule 2004
 13 scheduled for December 12, 2012 at 12 p.m. (Emergency Mot. (#1) at 1).

14 Pursuant to 28 U.S.C. § 1651, "[t]he Supreme Court and all courts established by Act
 15 of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions
 16 and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). The Ninth Circuit
 17 has held that a district court lacks authority to issue a writ of mandamus to a bankruptcy court
 18 and to another district court. *Mullis v. U.S. Bankruptcy Ct. for Dist. of Nev.*, 828 F.2d 1385,
 19 1393 (9th Cir. 1987). As such, the Court denies the Emergency Petition for Writ of
 20 Mandamus/Prohibition and Request for Immediate Stay (#1) because this Court lacks the
 21 authority to grant the requested relief.

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27 ² Crowley appeared with counsel at this hearing but because counsel was ill Crowley,
 28 a practicing bankruptcy attorney, presented his own arguments. (Emergency Mot. (#1) at 2).

CONCLUSION

For the foregoing reasons, IT IS ORDERED that the Emergency Petition for Writ of Mandamus/Prohibition and Request for Immediate Stay (#1) is DENIED because this Court lacks authority to grant the requested relief.

The Clerk of the Court shall enter judgment accordingly.

DATED: This 11th day of December, 2012.



United States District Judge

acting for Judge Robert Charles Jones